IN THE

Supreme Court of the United States

October Term, 1957

No. 3

CHARLES ROWOLDT, *Petitioner*,

v.

J. D. PERFETTO, Acting Officer in Charge, Immigration and Naturalization Service, Department of Justice, St. Paul, Minnesota.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Petitioner prays for a writ of certiorari to review a judgment of the United States Court of Appeals for the Eighth Circuit which affirmed a judgment of the United States District Court for the District of Minnesota denying a petition for a writ of habeas corpus.

OPINION BELOW

The opinion of the court below has not yet been officially reported. A copy of the opinion and judgment is hereto annexed as Appendix A.

JURISDICTION

1. The judgment of the Court of Appeals was issued on December 22, 1955. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. section 1254(1).

QUESTIONS PRESENTED

1. Whether the petitioner had been a member of the Communist Party as that term was defined by this Court in *Galvan* v. *Press*, 347 U.S. 522, or whether he had been only a nominal member and therefore not subject to deportation.

2. Whether, notwithstanding *Galvan*, the statute providing for deportation of aliens for past membership in the Communist Party is unconstitutional on its face or as applied to the facts in this case.

STATUTE INVOLVED

Section 22 of the Internal Security Act of 1950, 64 Stat. 1006, 1008, provides in part as follows:

> "That any alien who is a member of any one of the following classes shall be excluded from admission into the United States.
>
> * * * * *
>
> (2) Aliens who, at any time, shall be or shall have been members of any of the following classes:
>
> * * * * *
>
> (C) Aliens who are members of or affiliated with (i) the Communist Party of the United States . . ."

Section 4 of the aforesaid Section 22 provides in part:

> (a) Any alien who was at the time of entering the United States, or has been at any time thereafter, . . . a member of any one of the classes of aliens enumerated in section 1(2) of this Act, shall upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States."

This statute was carried forward by Section 241(a)(6)(C), of the Immigration and Nationality Act of 1952, 8 U. S. Code, section 1251 (a)(6)(C), providing:

> "Any alien in the United States . . . shall upon the order of the Attorney General, be deported who . . . is or at any time has been, after entry a member of the following classes of aliens: . . . Aliens who are members of . . . the Communist Party of the United States."

STATEMENT OF THE CASE

The petitioner is an alien and a native of Germany. He is 72 years of age. He was admitted to the United States for permanent residence in 1914, and has been a resident of the United States for over 40 years (R. 22). In 1935 the petitioner joined the Communist Party and remained a member for about six months (R. 22). He was ordered deported under the provisions of Section 22 of the Internal Security Act of 1950, *supra*, on the basis of his past membership in the Communist Party (R. 22-23).

The order of deportation was based entirely on the voluntary statement which the petitioner made to an officer of the Immigration Service (R. 103-110). In this statement the petitioner stated his purpose in joining the Communist Party as follows:

> "It seemed to me that it came hand in hand—the Communist Party and the fight for bread. It seemed to me like this—let's put it this way—that the Communist Party and the Workers Alliance had one aim—to get something to eat for the people." (R. 105).
>
> * * * * *
>
> Q. Again referring to your joining the Communist Party in 1935, was this motivated by dissatisfaction in living under a democracy?
>
> A. No, not by that. Just a matter of having no jobs at that time. Everybody around me had the idea that we had to fight for something to eat and clothes and shelter. We were not thinking then—anyways the fellows around me, of overthrowing anything. We wanted something to eat and something to crawl into.
>
> Q. You say 'fight for something to eat and crawl into.' What do you mean by that term?
>
> "A. We had to go and ask those who had it—that was the courthouse at that time. We petitioned city, state and national government. We did and we succeeded. We finally got unemployment laws and a certain budget. Even at the few communist meetings I attended, nothing was ever said about overthrowing anything. All they talked about was fighting for the daily needs. That is why we never thought much of joining those parties in those days." (R. 108-109.)

Petitioner filed a petition for a writ of habeas corpus in the United States District Court for the District of

Minnesota challenging the validity of this deportation order (R. 3-5). The District Court denied the petition for a writ holding that the deportation order was supported by the evidence. (R. 196-199). On appeal the Court of Appeals affirmed. (Appendix A).

REASONS FOR GRANTING THE WRIT

1. In *Galvan* v. *Press*, 347 U.S. 522, this Court upheld the constitutionality of the provision of the Internal Security Act of 1950 which provided for the deportation of aliens who at one time had been members of the Communist Party. The Court, however, in the course of its opinion held that the Act did not apply to every past member of the Communist Party. The Court said, at page 527:

> "Congress could not have intended to authorize the wholesale deportation of aliens who accidentally, artificially, or unconsciously in appearance only, are found to be members of or affiliated with an organization of whose platform and purposes they have no real knowledge."

The Court also referred (at 527) to the fact that in 1951 Congress specifically declared that it did not intend the term 'member' to cover aliens who "had joined a proscribed organization (1) when they were children, (2) by operation of law, or (3) to obtain the necessities of life."

This Court held that an alien comes within the terms of the statute even if he does not have knowledge of the Communist Party's claimed advocacy of violence. The Court added (at 528): "It is enough that the alien joined the Party, aware that he was joining an organization known as the Communist Party which operates

as a distinct and active political organization, and that he did so of his own free will." The Court concluded (at 529) that so far as the alien in that case was concerned, "The record does not show a relationship to the Party so nominal as not to make him a 'member' within the terms of the Act."

This case presents the important question as to what is a "nominal member" under the qualification made in *Galvan*.

The *Galvan* case was decided by this Court on May 24, 1954. Two weeks later this Court granted certiorari in the case of *Garcia* v. *Landon*, 347 U.S. 1011. The *Garcia* case, like *Galvan*, posed principally a challenge to the constitutionality of Section 22 of the Internal Security Act of 1950. In view of this Court's decision in *Galvan*, sustaining the constitutionality of the statute, the only question which remained open in the *Garcia* case was whether Garcia was a "member" of the Communist Party as that term had been defined in *Galvan*. Garcia, like the petitioner here, had joined the Communist Party as a result of his activities and associations in the Workers Alliance of America. He remained a member of the Communist Party for a considerably longer period than the petitioner here since he continued his membership for about two years. His objectives and purposes in joining the Communist Party were identical with that of the petitioner in that as a result of his activities in the Workers Alliance, he, like the petitoner, felt that his membership in the Party would assist him in gaining employment and relief.

In October, 1954, the government filed a suggestion of mootness in *Garcia*. In this suggestion, the govern-

ment stated that in view of the language of this Court in *Galvan*, it had set aside the deportation order so as to permit an administrative determination of whether Garcia was only a "nominal member" of the Communist Party as that term had been defined in *Galvan*.[1] This Court, on the basis of the suggestion filed by the government, dismissed the writ in the *Garcia* case as moot, 348 U.S. 666.

The petitioner's case is indistinguishable from Garcia's. His relationship with the Communist Party was, if anything, less than Garcia's. He was not active in the Communist Party. He joined because of his activities in the Workers Alliance and because of his belief that membership in the Communist Party would assist him and others in gaining employment relief, and legislation for the unemployed. As the petitioner stated:

> "We wanted something to eat and something to crawl into . . . All they [those present at Communist meetings] talked about was fighting for the daily needs. That is why we never thought much of joining those parties in those days."

Like the decision in *Garcia*, the decision of the Immigration Service in the petitioner's case was handed down prior to the decision of this Court in *Galvan*. Accordingly, the Service has at no time considered the applicability of the language of this Court in *Galvan* to the facts in petitioner's case. Thus the petitioner's case presents to this Court an opportunity to consider and decide the issue which it deemed im-

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[1] The government also indicated that it would consider whether to grant suspension of deportation.

portant in *Garcia* and on which it there granted certiorari. The issue is an important one in the continuing administration of Section 22 of the Internal Security Act of 1950, and the identical provision as carried forward by Section 241 (a)(6)(C) of the Immigration and Nationality Act of 1952, 8 U.S. Code section 1251(a)(6)(C).

There are many cases presently pending in the lower courts challenging the validity of deportation orders under these statutes and raising the question as to whether the evidence establishes that the alien was formerly a member of the Communist Party or whether his membership was only "nominal" as that term was defined in *Galvan*. Counsel for the petitioner themselves have eleven such cases at various stages pending in the United States District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit. Many other such cases are pending in other District Courts throughout the country and undoubtedly still others are either pending before or have been decided by the Immigration Service without a court challenge.

Some of these cases were decided prior to this Court's decision in *Galvan* and some subsequent thereto. In the experience of counsel, the Immigration Service has decided these cases and the lower courts have upheld its decisions without reference to or consideration of this Court's qualifying language in *Galvan*. Two such cases may be taken as typical of the type of evidence upon which deportation orders were entered.

In *Ramirez-Salse* v. *Brownell*, No. 12,852, pending in the United States Court of Appeals for the District of Columbia Circuit, a deportation order was entered

solely upon evidence of an undated card bearing the alien's signature and acknowledging receipt of a "membership book" but nowhere on its face indicating any application to the Communist Party, and not the subject of testimony explaining its source, plus the testimony of a former member of the Communist Party that the card corresponded to a form used by the Communist Party in 1938. There was no evidence as to the circumstances under which the alien had signed the card, and no evidence that the alien had ever applied for membership in the Communist Party, had ever attended meetings of the Communist Party, had ever paid dues to the Communist Party, or had ever participated in any way in any activites connected with the Communist Party. The Immigration Service, nevertheless held that the alien came within the provisions of the statute and must be deported and the District Court upheld the order of deportation.

In *Grondahl* v. *Brownell*, Civil Action No. 2513-54, in the United States District Court for the District of Columbia, notice of appeal in which has been filed, an order of deportation was based upon the testimony of a witness that in 1938 he had seen the alien "several times around the Industrial Section headquarters of the Communist Party," and that also in 1938 another official of the Party had told the witness, not in the presence of the alien, that the alien was a member of the Party. Here too, there was no evidence that the alien had ever joined the Communist Party, had ever attended a meeting or paid dues to the Party, or had ever participated in any way in any activities connected with the Party.

Under the circumstances, an early decision by this Court applying the *Galvan* qualification and indicating more specifically when an alien must be held to have been merely a nominal member of the Communist Party is essential for the proper administration of the Act and will avoid protracted litigation.

2. The petitioner in this case is being deported solely on the ground that he was a member of the Communist Party for six months in 1935, on a record which shows that his sole interest in the Communist Party was as an organization which would assist him in obtaining unemployment relief. The petitioner has been a resident of this country for over forty years. His contact with the Communist Party was a brief one and more than twenty years old and antedated the statute by fifteen. His motivation was economic necessity. We believe that *Galvan* was wrongly decided and should be overruled. In any event, we believe that the application of that decision to facts such as the present are so fundamentally unfair and so devoid of a legitimate governmental purpose as to warrant determination by the Court as to whether the statute sustained in *Galvan* can reach so far as to be constitutionally applied on the facts in this case.

Respectfully submitted.

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